

- at least one nonionic amphiphilic polymer comprising at least one fatty chain and at least one hydrophilic unit, said at least one nonionic amphiphilic polymer being chosen from

(1) celluloses modified with groups containing at least one fatty chain, and

(2) hydroxypropyl guars modified with groups containing at least one fatty chain; and

*B6*  
wherein said second compartment contains an oxidizing composition comprising an oxidizing agent used in a medium which is suitable for dyeing, wherein said oxidizing composition further comprises at least one nonionic amphiphilic polymer comprising at least one fatty chain and at least one hydrophilic unit, said at least one nonionic amphiphilic polymer being chosen from:

(1) celluloses modified with groups containing at least one fatty chain, and

(2) hydroxypropyl guars modified with groups containing at least one fatty chain.

### Remarks

Upon entry of this Preliminary Amendment, claims 30-71 will be pending.

#### I. Status of the Claims

Claim 1 has been canceled, and new claims 30-71 have been added.

Accordingly, claims 30-71 are currently pending in this application.

## II. Amendments to the Specification and Abstract

The original specification has been amended to indicate the present tradename of the polyether urethanes disclosed at page 8, lines 2-5. In addition, the INCI names for these specific tradenames have been added as published in the International Cosmetic Ingredient Dictionary and Handbook, 7<sup>th</sup> Edition, Vol 2, pp. 1137 and 1140 (1997). The original abstract has been amended to accurately reflect the claimed invention.

These are the same amendments made in the parent patent Application No. 09/362,997 ("the '997 application"). A review of that file indicates that these amendments have already been found acceptable by the Examiner.

Protection for some of the subject matter encompassed by the originally filed claims 1-29 has already been obtained in U.S. Patent No. 6,010,541 (hereinafter "the '541 patent"). New claims 30-71 have been filed in order to seek protection for other aspects of the invention namely, other nonionic amphiphilic polymers.

## III. Information Disclosure Statement

Applicants have concurrently submitted with this Preliminary Amendment, and Information Disclosure Statement ("IDS") and accompanying PTO Form 1449. The references cited in the IDS were submitted during the prosecution of the '997 application and of Application No. 09/362,996, filed July 30, 1999, and can be found in the prosecution histories of the '997 and '996 applications. While these references were submitted during prosecution of the '997 application, in order to comply with its

duty of disclosure Applicants resubmit these references for consideration by the Examiner.

**IV. Related Application Serial No. 09/362,996**

In related application 09/362,996 ("the '996 application), claims substantially identical to the claims currently pending in the present application were rejected under 35 U.S.C. §103(a) over Dubief (U.S. Patent No. 5,700,456) in view of the International Cosmetic Ingredient Dictionary ("ICID"), 35 U.S.C. §103(a) over Jacquet (U.S. Patent No. 4,283,384), and under 35 U.S.C. §103(a) over Revlon (WO 94/04125) in view of the International Cosmetic Ingredient Dictionary. Because the claims of the pending application are substantially identical to the claims filed in the related '996 application, Applicants provide the following response.

The rejections based upon Jacquet and Revlon, in view of the ICID, are moot because Applicants have removed the relevant subject matter from the pending claims. Accordingly, the present claims are not rendered obvious in view of that art.

With respect to the rejection based upon Dubief in view of the ICID, the Office, during the prosecution of the '996 application, took the position that Dubief "teaches hair treating compositions which contain at least one ceramide and/or glyceroceramide, and at least one cationic polymer, see Abstract." See November 3, 2000, Office Action (Paper No. 11) at pp. 2-3. The Office goes on to state that "[t]he compositions may also contain thickening agents, including the product sold under the name NATROSOL PLUS, see col. 8, lines 36-45." See November 3, 2000, Office Action (Paper No. 11) at

Although, Dubief discloses that its non-washing composition can be used for dyeing of keratinous fibres, in Example 6, Dubief's two-part oxidative hair dye composition is not thickened with cetyl hydroxyethylcellulose. See Dubief, cols. 10-11, Example 6. In fact, the oxidative dye composition of Example 6 is in a thickened form, i.e., cream, despite the absence of cetyl hydroxyethylcellulose. See Dubief, cols. 10-11, Example 6. Accordingly, one of skill in the art would not be motivated to modify the teachings of Dubief and add a thickener to the dye composition disclosed therein, because the reference itself specifically discloses that a thickener is not needed. Thus, the Office has failed to establish a prima facie case of obviousness.

In summary, Dubief does not provide any teaching or suggestion to modify its disclosure and add a thickener to the disclosed dye composition or any two-part oxidative dye composition. Accordingly, the Office has failed to establish a prima facie case of obviousness.

It is submitted that claims 30-71 are in condition for allowance over the prior art of record, and such action is respectfully requested. In the event that there are additional fees associated with entry of this Amendment, please charge them to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:

  
Allen R. Jensen  
Reg. No. 28,224

Dated October 9, 2001

212627\_1

LAW OFFICES  
FINNEGAN, HENDERSON,  
FARABOW, GARRETT,  
& DUNNER, L.L.P.  
1300 I STREET, N.W.  
WASHINGTON, DC 20005  
202-408-4000

p. 3. According to the Office, relying on the ICID, NATROSOL PLUS is the as claimed “cetyl hydroxyethylcellulose.” See November 3, 2000, Office Action (Paper No. 11) at p. 3. Further, the Office directed Applicants to Example 6, in which “Dubief exemplifies a cream oxidation hair dyeing composition[.]” See November 3, 2000, Office Action (Paper No. 11) at p. 3.

As Applicants previously argued in the ‘996 parent application, there would not have been a reasonable expectation of success to modify the teachings of Dubief and formulate a two-part oxidative hair dye due to the art-recognized unpredictability associated with such two-part oxidative hair dyes. While this remains true, Dubief itself provides further evidence that one of skill in the art would not be motivated to modify its teachings to obtain the presently claimed invention.

Dubief is not principally directed to oxidation dye compositions, but rather, to “non-washing compositions intended for the treatment and protection of hair, based on ceramide and/or glycoceramide and on cationic polymers.” See Dubief, col. 1, lines 51-54. Dubief goes on to state that the **“non-washing composition,”** not a two-part oxidative hair dye composition, can contain a thickening agent, which, according to the Office, can be cetyl hydroxyethylcellulose. See Dubief, col. 8, lines 36-47. To be sure, as indicated by the Office, Dubief discloses that its non-washing composition can be “used for the dyeing of keratinous fibres such as hair, in which case they contain oxidation dyes and/or direct dyes which are well known in the hair dyeing field.” See Dubief, col. 9, lines 18-21.

## APPENDIX

### **Amendment to the specification**

Please amend the specification as follows:

Please replace the paragraph at page 2, line 26 through page 3, line 20 and replace with:

"After considerable research conducted in this matter, the Applicant has now discovered that it is possible to obtain oxidation dye compositions (after mixing with the oxidants) which do not run and thus remain better localized at the point of application, and which also make it possible to obtain more intense or more chromatic (more luminous) shades, if an effective amount of a nonionic amphiphilic polymer containing at least one fatty chain and at least one hydrophilic unit is introduced (i) either into the composition containing the oxidation dye precursor or precursors and optionally the coupler or couplers [ ] (or composition (A)) [ ] or (ii) into the oxidizing composition [ ] (or composition (B)) [ ], or (iii) into both compositions at once

Please replace the paragraph at page 7, line 6, through page 8, line 24, and replace with:

"The nonionic amphiphilic polymers containing at least one fatty chain and at least one hydrophilic unit, which are used according to the invention, are preferably chosen from:

Tab right(1) cellulosics modified with groups containing at least one fatty chain; mention may be made, for example, of:

-hydroxylethyl celluloses modified with groups containing at least one fatty chain such as alkyl, arylalkyl or arylalkyl groups or mixtures thereof, and in which the alkyl groups are preferably C<sub>8</sub>-C<sub>22</sub>, such as the product Natrosol Plus Grade 330 (C<sub>16</sub> alkyls) sold by the company Aqualon or the product Bermocoll EHM 100 sold by the company Berol Nobel,

-those modified with polyalkylene glycol alkylphenyl ether groups, such as the product Americell Polymer HM-1500 (polyethylene glycol (15) nonylphenyl ether) sold by the company Amerchol.

Tab right(2) hydroxypropyl guars modified with groups containing at least one fatty chain, such as the product Esaflor HM 22 (C<sub>22</sub> alkyl chain) sold by the company Lamberti, and the products Miracare XC95-3 (C<sub>14</sub> alkyl chain) and RE205-1 (C<sub>20</sub> alkyl chain) and RE205-1 (C<sub>20</sub> alkyl chain) sold by the company Rhône-Poulenc.

Tab right(3) polyether urethanes containing at least one fatty chain such as C<sub>8</sub>-C<sub>30</sub> alkyl or alkenyl groups, for instance the products Dapral T210 and Dapral T212, now known respectively as Elfacos T210 and Elfacos T212, sold by the company Akzo Nobel.

The INCI names, as listed in the International Cosmetic Ingredient Dictionary and Handbook, for Elfacos T210 and Elfacos T212 are PPG-14 laureth-60 alkyl dicarbamate and PPG-14 palmeth-60 alkyl dicarbamate, respectively (International Cosmetic Ingredient Dictionary and Handbook, 7<sup>th</sup> Edition, Vol 2. pp. 1137 and 1140 (1997)).

**Tab right(4)** copolymers of vinylpyrrolidone and of hydrophobic monomers containing a fatty chain; [delete paragraphing]

mention may be made, for example, of:

-the products Anatron V216 or Ganex V216 (vinylpyrrolidone/hexadecene copolymer sold by the company ISP

-the products Anatron V220 or Ganex V220 (vinylpyrrolidone/eicosene copolymer) sold by the company ISP

**Tab right(5)** copolymers of C<sub>1</sub>-C<sub>5</sub> alkyl methacrylates or acrylates and of amphiphilic monomers containing at least one fatty chain, such as, for example, the oxyethylenated methyl methacrylate/stearyl acrylate copolymer sold by the company Goldschmidt under the name Antil 208.

**Tab right(6)** copolymers of hydrophilic methylacrylates or acrylates and of hydrophobic monomers containing at least one fatty chain, such as, for example, the polyethylene glycol methacrylate/lauryl methacrylate copolymer."

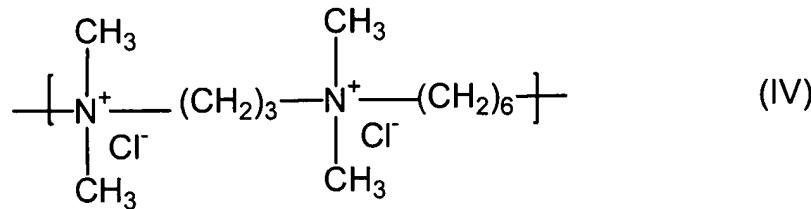
Please replace the paragraph at page 13, lines 12-19 with:

"Among the para-aminophenols of formula (III) above, mention may be made more particularly of [para-aminophenyl] para-aminophenol, 4-amino-3-methylphenol, 4-amino-3-fluorophenol, 4-amino-3-hydroxymethylphenol, 4-amino-2-methylphenol, 4-amino-2-hydroxymethylphenol, 4-amino-2-aminomethylphenol 4-amino-2 ( $\beta$ -hydroxyethylaminomethyl) phenol, and the addition salts thereof with an acid."

Please replace the paragraph at page 16, line 15 through page 17, line 8, with:

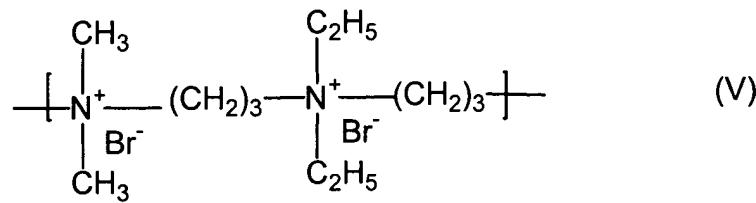
"The composition (A) and/or the composition (B) may also more particularly contain at least one cationic or amphoteric substantive polymer. Suitable cationic or amphoteric substantive polymers include the polymers described on pages 3 and 4 of patent application EP-0,673,641 A1, and advantageously preferred cationic or amphoteric polymers include:

-the quaternary polyammonium polymers prepared and described in French patent 2,270,846, consisting of repeating units corresponding to formula (IV) below:



and the molecular weight of which, determined by gel permeation chromatography, is between 9500 and 9900;

-the quaternary polyammonium polymers prepared and described in French patent 2,270,846, consisting of repeating units corresponding to formula (V) below:



and the molecular weight of which, determined by gel permeation chromatography, is about 1200."

Please replace the paragraph at page 19, lines 14-21, with:

"The pH of the ready to use composition applied to the keratin fibres [ ]  
(composition resulting from mixing together the dye composition (B)) [ ] is generally  
between the values 4 and 11. It is preferably between 6 and 10, and may be adjusted  
to the desired values by means of acidifying or basifying agents that are well known in  
the state of the art in the dyeing of keratin fibres."

**IN THE ABSTRACT:**

Please delete the abstract and replace it with: "An oxidation dye composition for  
keratin fibres and in particular for human keratin fibres such as the hair, comprising, in a  
medium which is suitable for dyeing, at least one oxidation dye precursor and optionally  
one or more couplers, characterized in that it also comprises a nonionic amphiphilic  
polymer containing at least one fatty chain and at least one hydrophilic unit [.], and,  
therefore the [The] invention also relates to the processes and dyeing devices using  
the said oxidation dye composition."